

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Custom Interface Technologies)	File No.: EB-10-LA-0130
A Division of Thornstar Corporation)	
)	NAL/Acct. No.: 201232900002
Joshua Tree, California)	
)	FRN: 0019067206

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: November 16, 2011**Released: November 17, 2011**

By the District Director, Los Angeles District Office, Western Region, Enforcement Bureau:

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture (“NAL”), we find that Custom Interface Technologies, a Division of Thornstar Corporation (“CIT”), in Joshua Tree, California, willfully and repeatedly violated section 302(b) of the Communications Act of 1934, as amended (“Act”),¹ and sections 2.803(a)(1) and 74.851(f) of the Commission’s rules (“Rules”)² by manufacturing and marketing unauthorized radio frequency devices. We conclude that CIT is apparently liable for a forfeiture in the amount of fourteen thousand dollars (\$14,000).

II. BACKGROUND

2. In May and June, 2010, the Enforcement Bureau’s Los Angeles Office (“Los Angeles Office”) investigated allegations that uncertified video assist transmitters were being sold and rented by various entities in the Los Angeles area.³ The Los Angeles Office determined that three film and video supply companies⁴ were marketing uncertified video assist transmitters, models Modulus 3000 and Modulus 5000, which were manufactured by CIT. On November 18, 2010, the Los Angeles Office issued citations to the Companies.⁵ The Companies responded,⁶ with each stating that it acquired the uncertified Modulus

¹ 47 U.S.C. § 302a(b).

² 47 C.F.R. §§ 2.803(a)(1), 74.851(f).

³ Video assist transmitters are authorized under Part 74, Subpart H of the Commission’s rules for use by television and motion picture producers, transmitting on VHF and UHF television channels on a non-interference basis. 47 C.F.R. § 74.870. This type of device is used as an aide in composing camera shots on motion picture and television sets. 47 C.F.R. § 74.801. All such transmitters marketed for use in this service are required to be certificated pursuant to Part 2 of the Commission’s regulations. 47 C.F.R. §§ 74.851(f), 2.803(a)(1).

⁴ The three companies were South Bay Film and Video Services, Abel Cine Tech, and Wolf Seeberg Video (“Companies”).

⁵ See *South Bay Film and Video Services*, Citation, 25 FCC Rcd 15989 (Enf. Bur., Los Angeles Office 2010); *Abel Cine Tech*, Citation, 25 FCC Rcd 15985 (Enf. Bur., Los Angeles Office 2010); *Wolf Seeberg Video*, Citation, 25 FCC Rcd 15981 (Enf. Bur. Los Angeles Office 2010) (collectively, “Citations”).

devices from CIT.⁷ On November 26, 2010, a Los Angeles Office agent found that the Modulus 3000 and 5000 video assist transmitters were offered for sale on CIT's website.⁸

3. On March 2, 2011, the Los Angeles Office issued a Letter of Inquiry to CIT.⁹ On May 5, 2011, in response to the *LOI*¹⁰, CIT stated that it did manufacture the Modulus video assist transmitter in two versions, the 3000 and the 5000, and that it "did not have any certifications or authorizations with regard to the Modulus transmitter, as it was manufactured for export only."¹¹ CIT acknowledged that it received notice from the Commission in 1996 concerning its marketing of the Modulus 2000 video assist transmitter and the requirement that such transmitters be certified prior to being marketed in the United States.¹² CIT further stated that it discontinued manufacture of the Modulus models in 2010 and that it currently has no inventory of the transmitters.¹³

III. DISCUSSION

4. Section 503(b) of the Act,¹⁴ provides that any person who willfully or repeatedly fails to comply substantially with the terms and conditions of any license, or willfully or repeatedly fails to comply with any of the provisions of the Act or of any rule, regulation, or order issued by the Commission thereunder, shall be liable for a forfeiture penalty. Section 312(f)(1) of the Act defines willful as the "conscious and deliberate commission or omission of [any] act, irrespective of any intent to violate" the law.¹⁵ The legislative history to section 312(f)(1) of the Act clarifies that this definition of willful applies to both section 312 and 503(b) of the Act¹⁶ and the Commission has so interpreted the term in the section 503(b)

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⁶ See Letter from Jonathan L. Kramer, Attorney for South Bay Film and Video Services, to Nader Haghighat, District Director, Los Angeles Office, Western Region, Enforcement Bureau, dated December 8, 2010 ("*South Bay Film and Video Service Citation Response*"); Letter from Jonathan L. Kramer, Attorney for Wolf Seeberg Video, to Nader Haghighat, District Director, Los Angeles Office, Western Region, Enforcement Bureau, dated December 15, 2010 ("*Wolf Seeberg Video Citation Response*"); See Letter from Peter Abel, Chief Executive Officer, Abel Cine Tech, to Nader Haghighat, District Director, Los Angeles Office, Western Region, Enforcement Bureau, dated December 6, 2010 ("*Abel Cine Tech Citation Response*").

⁷ See *South Bay Film and Video Service Citation Response* at 1; *Wolf Seeberg Video Citation Response* at 1; *Abel Cine Tech Citation Response* at 1.

⁸ The website contained advertising, sales and contact information as well as dealer contacts. See <http://www.custominterface.com> (last visited November 26, 2010). The Los Angeles agent had previously visited the site on May 28, 2010, and found the same information. See <http://www.custominterface.com> (visited May 28, 2010).

⁹ See *Letter of Inquiry* from Nader Haghighat, District Director, Los Angeles Office, Western Region, Enforcement Bureau, to Custom Interface Technologies, dated March 2, 2011 ("*LOI*").

¹⁰ See Letter from Philip Spinelli, Custom Interface Technologies, to Nader Haghighat, District Director, Los Angeles Office, Western Region, Enforcement Bureau, dated May 5, 2011 ("*LOI Response*").

¹¹ *LOI Response* at 1.

¹² *LOI Response* at 1, Attachment 2.

¹³ *LOI Response* at 2.

¹⁴ 47 U.S.C. § 503(b).

¹⁵ 47 U.S.C. § 312(f)(1).

¹⁶ H.R. Rep. No. 97-765, 97th Cong. 2d Sess. 51 (1982) ("This provision [inserted in section 312] defines the terms 'willful' and 'repeated' for purposes of section 312, and for any other relevant section of the Act (e.g., section 503).... As defined ... 'willful' means that the licensee knew that he was doing the act in question, regardless of whether there was an intent to violate the law. 'Repeated' means more than once, or where the act is continuous, for more than one day. Whether an act is considered to be 'continuous' would depend upon the circumstances in each

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context.¹⁷ The Commission may also assess a forfeiture for violations that are merely repeated, and not willful.¹⁸ The term “repeated” means the commission or omission of such act more than once or for more than one day.¹⁹

A. Marketing of Uncertified Devices

5. Section 302(b) of the Act provides that “[n]o person shall manufacture, import, sell, offer for sale, or ship devices or home electronic equipment and systems, or use devices, which fail to comply with regulations promulgated pursuant to this section.”²⁰ Section 2.803(a)(1) of the Rules provides that:

Except as provided elsewhere in this section, no person shall sell or lease, or offer for sale or lease (including advertising for sale or lease), or import, ship, or distribute for the purpose of selling or leasing or offering for sale or lease, any radio frequency device unless ... [i]n the case of a device that is subject to certification, such device has been authorized by the Commission in accordance with the rules in this chapter and is properly identified and labeled as required by § 2.925 and other relevant sections in this chapter.²¹

As video assist transmitters,²² the Modulus 3000 and 5000 models are required by section 74.851(f) of the Rules²³ to be approved through the equipment certification²⁴ procedures described in Part 2 of the Rules prior to marketing in the U.S.²⁵

6. CIT acknowledges that it manufactured the Modulus 3000 and 5000 video assist transmitters and that it never obtained Commission certifications or authorizations for the transmitters.²⁶ Visits to the CIT website by a Los Angeles agent revealed that CIT marketed²⁷ these transmitters for sale from at least May 28, 2010, through November 26, 2010 in the U.S. Although CIT claims it

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case. The definitions are intended primarily to clarify the language in sections 312 and 503, and are consistent with the Commission’s application of those terms ...”).

¹⁷ See, e.g., *Application for Review of Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388 (1991), *recon. denied*, 7 FCC Rcd 3454.

¹⁸ See, e.g., *Callais Cablevision, Inc.*, Notice of Apparent Liability for Monetary Forfeiture, 16 FCC Rcd 1359, 1362 ¶ 10 (2001) (“*Callais Cablevision, Inc.*”) (proposing a forfeiture for, *inter alia*, a cable television operator’s repeated signal leakage).

¹⁹ Section 312(f)(2) of the Act, 47 U.S.C. § 312(f)(2), which also applies to violations for which forfeitures are assessed under section 503(b) of the Act, provides that “[t]he term ‘repeated’, when used with reference to the commission or omission of any act, means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day.” See *Callais Cablevision, Inc.*, 16 FCC Rcd at 1362.

²⁰ 47 U.S.C. § 302a(b).

²¹ 47 C.F.R. § 2.803(a)(1).

²² 47 C.F.R. §§ 74.801 – 74.882; see *supra* note 3.

²³ 47 C.F.R. § 74.851(f).

²⁴ A certification is an equipment authorization issued by the Commission, based on representations and test data submitted by the applicant. See 47 C.F.R. § 2.907(a).

²⁵ 47 C.F.R. §§ 2.1031 – 2.1060.

²⁶ *LOI Response* at 1 – 2.

²⁷ Marketing, as defined in 47 C.F.R. § 2.803(e)(4), “includes sale or lease, or offering for sale or lease, including advertising for sale or lease, or importation, shipment, or distribution for the purpose of selling or leasing or offering for sale or lease.”

manufactured the Modulus transmitters for export only,²⁸ all three of the Los Angeles Companies that received citations for marketing the Modulus 3000 and 5000 transmitters were referenced on the CIT website and all three stated that they obtained the transmitters directly from CIT.²⁹ Based on the evidence before us, we find that CIT apparently willfully and repeatedly violated section 302(b) of the Act and sections 2.803(a)(1) and 74.851(f) of the Rules by manufacturing and marketing unauthorized radio frequency devices, specifically, two models of the Modulus video assist transmitters, in the United States.

B. Proposed Forfeiture

7. Pursuant to the Commission's *Forfeiture Policy Statement* and section 1.80 of the Rules, the base forfeiture amount for marketing of unauthorized equipment is \$7,000.³⁰ In assessing the monetary forfeiture amount, we must also take into account the statutory factors set forth in section 503(b)(2)(E) of the Act, which include the nature, circumstances, extent, and gravity of the violations, and with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other such matters as justice may require.³¹ Applying the *Forfeiture Policy Statement*, section 1.80 of the Rules, and the statutory factors to the instant case, we conclude that CIT is apparently liable for a total forfeiture of \$14,000 for marketing two models of unauthorized video assist transmitters manufactured by CIT, model Modulus 3000 and model Modulus 5000, in violation of section 302(b) of the Act and sections 2.803(a)(1) and 74.851(f) of the Rules.³²

IV. ORDERING CLAUSES

8. Accordingly, **IT IS ORDERED** that, pursuant to section 503(b) of the Communications Act of 1934, as amended, and sections 0.111, 0.204(b), 0.311, 0.314 and 1.80 of the Commission's rules, Custom Interface Technologies, a Division of Thornstar Corporation, is hereby **NOTIFIED** of this **APPARENT LIABILITY FOR A FORFEITURE** in the amount of fourteen thousand dollars (\$14,000) for marketing two models of uncertified wireless video assist transmitters in willful and repeated violations of section 302(b) of the Act and sections 2.803(a)(1) and 74.851(f) of the Rules.³³

9. **IT IS FURTHER ORDERED** that, pursuant to section 1.80 of the Commission's rules within thirty days of the release date of this Notice of Apparent Liability for Forfeiture, Custom Interface

²⁸ Pursuant to section 2.807(b) of the Rules, the section 2.803 requirements do not apply to radio frequency devices manufactured solely for export. 47 C.F.R. § 2.807(b). *See also* 47 U.S.C. § 302a(c). This exemption, however, applies only to devices that the manufacturer actually exports. *See Inter Tech FM*, Notice of Apparent Liability for Forfeiture, 24 FCC Rcd 9020 (Enf. Bur. 2009) (unauthorized FM broadcast transmitters and external RF power amplifiers marketed for sale in U.S. were not covered by section 2.807(b) exemption despite claim that the devices were marketed for "export only"); *Gibson Tech Ed Inc.*, Memorandum Opinion and Order, 21 FCC Rcd 9642 (Enf. Bur. 2006) (exception for sale of broadcast transmitters is available to manufacturer of transmitters only if manufacturer in fact exports the devices).

²⁹ *South Bay Film and Video Service Citation Response* at 1 (stating that it purchased the subject wireless video assist devices from CIT); *Wolf Seeberg Video Citation Response* at 1 (stating that it purchased the Modulus Models 3000 and 5000 wireless video assist devices from CIT); *Abel Cine Tech Citation Response* at 1 (stating that it acquired the Modulus devices from CIT to sell only to buyers or renters outside the United States).

³⁰ *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, Report and Order, 12 FCC Rcd 17087 (1997) ("*Forfeiture Policy Statement*"), *recon. denied*, 15 FCC Rcd 303 (1999); 47 C.F.R. § 1.80.

³¹ 47 U.S.C. § 503(b)(2)(E).

³² *See Jason Kaltenbach D/B/A Metamerchant, Laguna Nigel, California*, 22 FCC Rcd 2087 (Enf. Bur. 2007) (assessing a \$7,000 forfeiture for each of two models of uncertified devices to the marketer of the devices).

³³ 47 U.S.C. § 503(b), 302a(b); 47 C.F.R. §§ 0.111, 0.204(b), 0.311, 0.314, 1.80, 2.803(a)(1), 74.851(f).

Technologies, a Division of Thornstar Corporation, **SHALL PAY** the full amount of the proposed forfeiture, per paragraph 10, below, or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture, per paragraphs 11 and 12.

10. Payment of the forfeiture must be made by credit card, check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the Account Number and FRN referenced above. Payment by check or money order may be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000. Payment by overnight mail may be sent to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101. Payment by wire transfer may be made to ABA Number 021030004, receiving bank TREAS/NYC, and account number 27000001. For payment by credit card, an FCC Form 159 (Remittance Advice) must be submitted. When completing the FCC Form 159, enter the NAL/Account number in block number 23A (call sign/other ID), and enter the letters “FORF” in block number 24A (payment type code). Requests for full payment under an installment plan should be sent to: Chief Financial Officer – Financial Operations, 445 12th Street, S.W., Room 1-A625, Washington, D.C. 20554.³⁴ If you have questions regarding payment procedures, please contact the Financial Operations Group Help Desk at 1-877-480-3201 or Email: ARINQUIRIES@fcc.gov. Custom Interface Technologies, a Division of Thornstar Corporation, shall also send electronic notification on the date said payment is made to WR-Response@fcc.gov.

11. The written statement seeking reduction or cancellation of the proposed forfeiture, if any, must include a detailed factual statement supported by appropriate documentation and affidavits pursuant to sections 1.80(f)(3) and 1.16 of the Rules.³⁵ Mail the written statement to Federal Communications Commission, Enforcement Bureau, Western Region, Los Angeles District Office, 18000 Studebaker Rd., Suite 660, Cerritos, CA 90703 and include the NAL/Acct. No. referenced in the caption. Custom Interface Technologies, a Division of Thornstar Corporation, also shall email the written response to WR-Response@fcc.gov.

12. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices (“GAAP”); or (3) some other reliable and objective documentation that accurately reflects the petitioner’s current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

³⁴ See 47 C.F.R. § 1.1914.

³⁵ 47 C.F.R. §§ 1.16, 1.80(f)(3).

13. **IT IS FURTHER ORDERED** that a copy of this Notice of Apparent Liability for Forfeiture shall be sent by both Certified Mail, Return Receipt Requested, and regular mail, to Custom Interface Technologies, a Division of Thornstar Corporation, at P.O. Box 1364, Joshua Tree, CA 92252.

FEDERAL COMMUNICATIONS COMMISSION

Nader Haghighat
District Director
Los Angeles District Office
Western Region
Enforcement Bureau